SUPREME COURT
OF
BRITISH COLUMBIA
SEAL
30-Jan-25
Kamloops
REGISTRY

No.*Court File No.* ***KAM-S-S-63922***
Kamloops Registry

In the Supreme Court of British Columbia

Between

Attorney General of British Columbia

Petitioner

and

Reid Hamer-Jackson

Respondent

PETITION TO THE COURT

ON NOTICE TO: Mayor Reid Hamer-Jackson

The address of the registry is: 223 – 455 Columbia Street, Kamloops, BC

The petitioner estimates that the hearing of the petition will take **2 hours**.

This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by the person named as petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner(s)

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

(a) if you were served with the petition anywhere in Canada, within 21 days after service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner is: 1301 - 865 Hornby Street Vancouver, British Columbia, V6Z 2G3 Fax number for service of the petitioner: (604) 660-3567 E-mail address for service of the petitioner: Michael.Kleisinger@gov.bc.ca
(2)	The name and office address of the petitioner's lawyer is: Michael J. Kleisinger, Lawyer Ministry of Attorney General 1301 - 865 Hornby Street Vancouver, British Columbia, V6Z 2G3

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. An order pursuant to s. 73.2(2) of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 ("*FOIPPA*") requiring the Respondent, Mayor Reid Hamer-Jackson (the "Mayor") to:

    a. Return to the City of Kamloops (the "City") all copies of the workplace investigation report containing personal information dated May 31, 2023 (the "Report") in his possession or control;

b. Destroy any copies of the Report in his possession or control;

c. Permanently delete any electronic copies of the Report in his possession or control; and

d. Within 72 hours of the pronouncement of the order, disclose to counsel for the Attorney General of British Columbia the name of any person or persons to whom the Mayor has disclosed the Report.

2. If necessary, an interim order pursuant to s. 73.2(3) of *FOIPPA* that the Mayor surrender the Report and any copies of it in his possession or control to the City's Corporate Officer until the Court reaches a decision on this Petition.

3. An order sealing any exhibit containing the Report or portions of the Report.

4. Such further or other orders as this Honourable Court considers appropriate.

5. Costs.

Part 2: FACTUAL BASIS

The Parties

1. The Attorney General is the official legal advisor of the Lieutenant Governor as is the Legal Member of the Executive Council. Pursuant to s. 73.2(1) of *FOIPPA*, she may petition the Court for an order requiring the return of "personal information" in the possession of a person not authorized by law to possess that information.

Attorney General Act, RSBC 1996, c. 22, s. 2

2. The City is a municipality located within the Thompson-Nicola Regional District with a population of approximately 97,000. The City is incorporated pursuant to the authority of the *Community Charter,* SBC 2003, c. 26 and the *Local Government Act*, SBC 2015, c. 1. Pursuant to Schedule 1 of *FOIPPA,* the City is a "public body."

3. Pursuant to s. 116 of the *Community Charter*, the Mayor is the Chief Executive Officer of the City. For the purposes of *FOIPPA*, he is an "officer" of a public body.

Affidavit #1 of Colleen Quigley (Quigley Affidavit #1) at paras. 3 & 4
R. v. Skakun, 2014 BCCA 223 ("*Skakun")* at para. 32

The Report

4. In or about December 2022 and January 2023, municipal council for the City ("Council") and the City's Human Resources and Safety Department received complaints about the Mayor's conduct in the workplace.

Quigley Affidavit #1 at para. 5

5. The City's legal counsel retained an independent external investigator to investigate the complaints and provide the City with a confidential workplace investigation report. The City sought the report for its use in managing its workplace.

Quigley Affidavit #1 at para. 6

6. Between February and May 2023, the investigator investigated the complaints, prepared the Report containing his findings, and provided it to the City's legal counsel on June 7, 2023.

Quigley Affidavit #1 at paras. 7 & 8

7. The Report contains:

    a. The names of all persons interviewed for the Report, including those who complained about the Mayor's conduct, those who witnessed the conduct, and others who the investigator interviewed;

    b. The names of others, including employees, who were not interviewed but referenced or implicated in the incidents or investigation;

    c. The details of personal interactions and experiences of those interviewed;

    d. The employment histories of those interviewed and not interviewed; and

    e. The personal views and opinions of those interviewed.

    (collectively, the "Reported Personal Details")
    Quigley Affidavit #1 at para. 9

8. On June 13, 2023, Council formally received and considered the Report in a closed council meeting (also known as *in-camera*). The City provided all members of Council with an electronic copy of the Report with various security features to prevent the Report from being printed, saved, and shared. The City did not provide the Mayor with a copy of the Report as it considered him in a conflict of interest among other reasons.

    Quigley Affidavit #1 at paras. 10 - 13

9. At the June 13, 2023 meeting - after reviewing the Report - Council approved various measures adopted to protect City staff from the Mayor's conduct.

    Quigley Affidavit #1 at paras. 16 & 17

10. The City asserts and maintains *in-camera* confidentiality and solicitor-client privilege over the Report.

    Quigley Affidavit #1 at para. 15

The Mayor Receives the Report

11. On April 5, 2024, the Mayor stated to a media outlet that he received a copy of the Report in his mailbox from an unknown sender in Tofino.

Quigley Affidavit #1 at para. 16
Affidavit #1 of Stephanie Nichols ("Nichols Affidavit #1") at para. 13, pp. 16, 35 & 36

12. The Mayor provided copies of the Report to several media outlets. He has also repeatedly stated his intention to use the Report to "clear his name."

Quigley Affidavit #1 at para. 18
Nichols Affidavit #1 at pp. 16, 17, 35, 40, 50 & 51

The City Demands the Report's Return

13. Beginning on April 5, 2024 - pursuant to s. 73.1 of *FOIPPA* - the City sent letters to the Mayor demanding the return or destruction of the Report in the Mayor's possession. To date, the Mayor has not returned the Report to the City nor confirmed his destruction of the Report in his possession.

Nichols Affidavit #1 at paras. 13 – 16, pp. 21, 22, 30, 31 & 33

14. Beginning November 6, 2024, the Attorney General has requested that the Mayor return or destroy the Report in his possession. To date, the Mayor not done so.

Affidavit #1 of Raveen Pauls ("Pauls Affidavit #1") at pp. 1-3 & 7-10

15. The Mayor continues to inform the media his intention to use the Report for various purposes in the future.

Nichols Affidavit #1 at para. 17

Part 3: LEGAL BASIS

Overview

16. In *Skakun*, Madam Justice Smith gave the following overview of *FOIPPA's* scope and purpose at para. 1:

> In an open and democratic society, protection of personal information in the control of public bodies is an essential counterbalance to the right of access to information from public bodies. Legislation that ensures these dual objects has long been recognized as "quasi-constitutional" and is generally interpreted in a manner that advances its broad underlying policy objectives. [citations omitted] In this province, those objectives are encompassed in [*FOIPPA*].

17. As noted in s. 2(1)(d), one of *FOIPPA*'s purposes is to prevent the unauthorized collection, use or disclosure of personal information by public bodies. Schedule 1 broadly defines personal information as meaning recorded information (other than business contact information) about an identifiable individual.

18. Under *FOIPPA*, the City is a public body that is obligated to protect personal information in its custody or control (s. 30). Employees, officers, and directors of public bodies must not disclose personal information except as specifically authorized (s. 26.1). Those that collect, use, or disclose personal information without authorization commit punishable privacy offences under s. 65.4.

British Columbia (Attorney General) v. Fuller
2018 BCSC 1981 ("*Fuller"*) at para. 3

19. Additionally, the statute provides for the Attorney General to petition the court for the return of personal information from those unauthorized to possess it through ss. 73.1 and 73.2.

Sections 73.1 and 73.2

20. *FOIPPA* provides a process for public bodies to recover personal information from those who are not authorized by law to possess it. First, the head of the public body must issue a written demand in the appropriate form (s. 73.1). If the demand goes unheeded, the public body may request the Attorney General to petition the court for an order (s. 73.2).

21. If the Attorney General establishes the following factors an order under s. 73.2 must follow:

    a. The material in question must be "personal information;"

    b. The personal information must be "in the custody or under the control" of a "public body;"

    c. The personal information must be in the possession of a person or entity "not authorized by law" to possess it;

    d. A demand in writing for the return of the personal information (or destruction in the case of electronic records) must be issued; and

    e. The recipient of the demand for return or destruction must fail to comply adequately.

Fuller at para. 6
British Columbia (Attorney General) v. Gondor, 2024 BCSC 1077, at para. 8

a. The information at issue is "personal information"

22. "Personal Information" means recorded information about an identifiable individual other than business contact information. As Justice Thompson stated in *Fuller* at para. 13:

> …Whether documents record private, personal, confidential or embarrassing information, on the one hand, or anodyne and perfectly mundane on the other, if information is record about identifiable individuals then the documents contain "personal information." …

23. The Reported Personal Details – including names, employment history, and witness views and opinions - easily fall within the broad ambit of *FOIPPA*-protected personal information.

b. The personal information is under the custody or control of the public body

24. As noted above, the City is a "public body" as defined in *FOIPPA*.

25. The City commissioned, possesses, and owns the Report. In accordance with s. 26 of *FOIPPA,* the investigator collected the personal information of those interviewed at the City's behest to assist the City manage its workplace. The City maintains its solicitor-client privilege and *in-camera* confidentiality over the Report.

26. That someone leaked the Report to the Mayor who subsequently leaked the Report to the media does not detract from the City's custody and control of the personal information contained within the Report.

27. In the Attorney General's view, the appropriate perspectives are those whose personal information is within the Report. They provided the City with their personal information, not the Mayor nor those to whom the Mayor leaked the Report.

28. As found in *Fuller,* that the Mayor and others have copies of the Report "does not detract from the City's custody of the documents and the personal information contain in them."

Fuller at para. 14

c. The Mayor is "not authorized by law" to possess the personal information

29. While the City's original collection of the personal information was lawful, the Mayor's possession of the Report is not. The City maintains that the Mayor – whose behaviour forms the subject of the Report – is in a conflict of interest and was not entitled to view or discuss the Report at the *in-camera* meeting.

30. The Mayor did not obtain the Report and its personal information in a manner that the law authorizes (i.e. via *FOIPPA* request or court order). Rather, he received a leaked copy of the Report anonymously in his mailbox. That he is only in possession of the Report – over which the City maintains privilege - through such means satisfies this factor.

31. The Mayor is not specifically authorized to possess the personal information contained in the Report. In fact, the City only allowed the Council to view to Report at an *in-camera* meeting with security features to prevent Council members from possessing the Report. Further, the Mayor does not need to know this personal information to perform his duties as Mayor as set out in ss. 115 and 116 of the *Community Charter*. These points confirm that the Mayor is not in lawful possession of the Report.

d. The City demanded return of the personal information

32. On April 5 and 7, and June 12, 2024, the City sent s. 73.1 demands to the Mayor and his counsel.

Nichols Affidavit #1 at pp. 20 – 22 & 29 - 45

e. The Mayor has failed to comply with the 73.1 demand

33. The Mayor has not complied with any of the s. 73.1 demands for the return and/or destruction of the Report. Further, the Mayor has not complied with the Attorney General's requests for him to do so in advance of this petition.

Nichols Affidavit #1 at paras. 12 – 17
Pauls Affidavit #1 at pp. 1 - 37

f. *Additional considerations not forming part of the test*

34. Ancillary to the statutory test - but noteworthy nonetheless - is the fact the Mayor cannot do anything with the Report without offending the law.

35. Section 25.1 of *FOIPPA* prohibits an officer of a public body from collecting, using or disclosing personal information except as authorized by *FOIPPA.* The Mayor's stated intention is to use the Report and the personal information therein for purposes of "clearing his name." This is not an authorized use of personal information. Further, the Mayor will commit a privacy offense under s. 65.4 of *FOIPPA* if he uses or discloses the personal information again.

36. Even if the Mayor was entitled to possess the Report (which he is not), he still could not use or disseminate it without offending the *Community Charter*. Section 117 requires the Mayor, as a council member, to keep in confidence any record held in confidence by the municipality and any information considered in any part of a council meeting that was lawfully closed to the public. The Report was shared and discussed with the Council in confidence at an *in-camera* meeting. If the Mayor continues to use the Report, he does so contrary to s. 117 of the *Community Charter*.

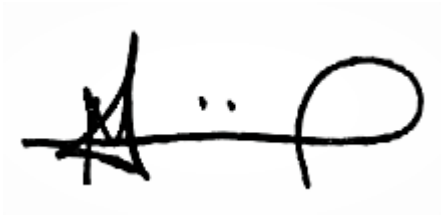
Conclusion

37. Having satisfied the statutory test, the Attorney General asks that the Court require the Mayor to return the Report, destroy electronic copies in his possession, and to advise the Attorney General, in writing, of those to whom he has disseminated the Report. Such orders mirror those granted in *Fuller* and *Gondor.*

38. The Attorney General seeks her costs.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit # 1 of Colleen Quigley, made January 21, 2025
2. Affidavit #1 of Stephanie Nichols made January 17, 2025
3. Affidavit #1 of Raveen Pauls made January 23, 2025



Date: January 28, 2025

_____
Michael J. Kleisinger
Signature of lawyer for petitioner

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this petition

[ ] with the following variations and additional terms:

.....

.....

.....

Date: .....[*dd/mmm/yyyy*]..... ._____

Signature of [ ] Judge [ ] Associate Judge